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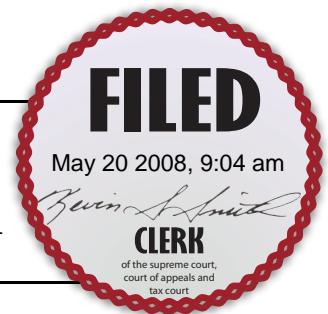
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**IN THE  
COURT OF APPEALS OF INDIANA**



KELLEY PARTNERS, INC.,

Appellant-Defendant,

VS.

QUALITY OIL COMPANY, INC.,

Appellee-Plaintiff.

No. 64A05-0710-CV-598

APPEAL FROM THE PORTER SUPERIOR COURT  
The Honorable William E. Alexa, Judge  
Cause No. 64D01-0511-CC-9598

**May 20, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Quality Oil Company, Inc. (“Quality Oil”) filed a complaint against Kelley Partners, Inc. (“Kelley Partners”) alleging breach of contract. Kelley Partners appeals the trial court’s determination that Indiana had personal jurisdiction over Kelley Partners in this matter, claiming that it did not have sufficient minimum contacts with Indiana and that maintenance of the suit against it offended traditional notions of fair play and substantial justice.

We reverse.

### **FACTS AND PROCEDURAL HISTORY**

Quality Oil is an Indiana corporation that supplies oil products to vendors in the states of Indiana, Illinois, Michigan, and Wisconsin. Kelley Partners is an Illinois corporation that operated two service stations in Illinois, and whose president, Ronald D. Kelley (“Mr. Kelley”), was, at all times relevant, a resident of Illinois. Sometime in the early 1990s, Kelley Partners began ordering products from Quality Oil. Quality Oil had sales representatives who made regular calls on Kelley Partners as well as other vendors in Illinois. In 1994, Mr. Kelley came to Quality Oil in Indiana on two occasions. On September 9, 1994, Quality Oil entered into an agreement to loan several pieces of equipment to Kelley Partners in exchange for Kelley Partners’ commitment to purchase oil products from Quality Oil. On April 26, 1999, Kelley Partners signed another agreement with Quality Oil. Both of these contracts were honored by Kelley Partners.

In the spring of 2003, Mr. Kelley spoke with Michael Heinold, the chief executive officer of Quality Oil, and expressed interest in signing another agreement with Quality Oil. Mr. Kelley and Heinold spoke on the telephone several times regarding this agreement, and Heinold visited Kelley Partners in Illinois twice. Mr. Kelley made one visit to Quality Oil in

the spring of 2003 for an unspecified reason. The final contract was hand delivered by Heinold to Illinois, and on June 26, 2003, Kelley Partners entered into a “Product Payback Loan and Supply Agreement” (“Agreement”) with Quality Oil. *Pl.’s Ex. 1*. Under the Agreement, Quality Oil loaned Kelley Partners \$150,500 in exchange for Kelley Partners’ promise to purchase 225,000 gallons of Mobil motor oil and 225,000 Mobil brand filters within sixty months. Kelley Partners ordered products from Quality Oil either by telephone or fax using an 800 number.

On July 18, 2005, Mr. Kelley sent an announcement to Quality Oil stating that he had sold Kelley Partners and asking that all final invoices be sent to him in West Chicago, Illinois. After this announcement was sent, Quality Oil sent Mr. Kelley several invoices concerning the money owed by Kelley Partners under the Agreement. Kelley Partners stopped purchasing from Quality Oil in July 2005 and did not pay back the money owed under the Agreement.

On November 4, 2005, Quality Oil filed a complaint against Kelley Partners in Porter County, Indiana, alleging breach of contract. Kelley Partners filed a motion to dismiss pursuant to Indiana Trial Rule 12(B)(2) for lack of personal jurisdiction. The trial court denied this motion without a hearing. Kelley Partners filed a motion for findings and conclusions on April 26, 2007, and a bench trial was held on the same day. On September 10, 2007, the trial court issued its findings and conclusions, again finding that it had personal jurisdiction over Kelley Partners and that Kelley Partners breached the Agreement. Kelley Partners now appeals.

## **DISCUSSION AND DECISION**

Personal jurisdiction is a question of law, and as such, a determination that personal jurisdiction exists is entitled to *de novo* review by appellate courts. *LinkAmerica Corp v. Albert*, 857 N.E.2d 961, 965 (Ind. 2006) (citing *Anthem Ins. Cos. v. Tenet Healthcare Corp.*, 730 N.E.2d 1227, 1237 (Ind. 2000), *superceded by statute*). We do not defer to the trial court’s legal conclusion as to whether personal jurisdiction exists. *Id.* “However, to the extent that the trial court found facts to support jurisdiction, those facts will be reviewed for clear error.” *JPMorgan Chase Bank, N.A. v. Desert Palace, Inc.*, 882 N.E.2d 743, 747 (Ind. Ct. App. 2008). Personal jurisdiction is presumed to exist until the defendant comes forward with evidence sufficient to challenge jurisdiction. *Id.* at 748. The party challenging jurisdiction has the burden of proving such by a preponderance of the evidence. *Id.*

Personal jurisdiction is a court’s power to bring an individual into its adjudicative process and render a valid judgment against the individual. *Keesling v. Winstead*, 858 N.E.2d 996, 1000 (Ind. Ct. App. 2006). After the 2003 amendment to Indiana Trial Rule 4.4(A), Indiana’s long-arm statute, our Supreme Court held that such amendment was “intended to, and does reduce analysis of personal jurisdiction to the issue of whether the exercise of personal jurisdiction is consistent with the Federal Due Process Clause.” *LinkAmerica*, 857 N.E.2d at 967. Under the Due Process Clause of the Fourteenth Amendment, in order for a state to be able to exercise jurisdiction over a defendant, it must be demonstrated that the defendant has certain minimum contacts with the state such that the court’s exercise of jurisdiction does not offend “traditional notions of fair play and substantial justice.” *Id.* (quoting *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)).

Personal jurisdiction may be established in one of two ways. First, “[i]f the defendant’s contacts with the state are so ‘continuous and systematic’ that the defendant should reasonably anticipate being haled into the courts of the state for any matter, then the defendant is subject to general jurisdiction . . . .” *Id.* (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 415 n.9, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984)). General jurisdiction will exist even in claims unrelated to the defendant’s contacts with the forum state. *Id.*

Second, “[i]f the defendant’s contacts with the forum state are not ‘continuous and systematic,’ specific jurisdiction may be asserted if the controversy is related to or arises out of the defendant’s contacts with the forum state.” *Id.* For specific jurisdiction to exist, a defendant must purposefully avail itself of the privilege of conducting activities within the forum state so that it reasonably anticipates being haled into court there. *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)). A single contact with the forum state may be sufficient to satisfy specific jurisdiction, if it creates a “substantial connection” with the forum state and the claim is related to that connection. *Id.* (citing *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957)). Specific jurisdiction will not be found to exist “solely as a result of random, fortuitous, or attenuated contacts or of the unilateral activity of another party or a third person.” *Id.* (quoting *Burger King*, 471 U.S. at 475).

Finally, if the defendant’s contacts with the forum state are sufficient for general or specific jurisdiction, the state’s exercise of jurisdiction over the defendant must be reasonable to satisfy due process. *JPMorgan Chase*, 882 N.E.2d at 749. The reasonableness of

exercising jurisdiction is determined by balancing the following five factors: (1) the burden on the defendant; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenience and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies. *Id.*

Kelley Partners argues that the trial court erred in its determination that it had personal jurisdiction over Kelley Partners. Kelley Partners specifically contends that its contacts with Indiana were not sufficient to subject it to the jurisdiction of the state. It claims that its only contact with the state was one visit by Mr. Kelley in the spring of 2003, no evidence was presented regarding the reason for such visit, and the relationship between the parties was commenced in Illinois through solicitation by Quality Oil's representatives. Additionally, Kelley Partners asserts that it did not purposely avail itself of the privileges of doing business in Indiana, as it was an Illinois corporation and acting only as a consumer of Quality Oil's products. It maintains that it did nothing but order products through an 800 number of an unspecified location and that there is no evidence that Mr. Kelly traveled to Indiana for business purposes.

The record before us demonstrates that Kelley Partners is an Illinois corporation that operates two service stations in the state of Illinois. It does not regularly do business in Indiana and has no offices or service stations in the state. From the evidence, it appears that Kelley Partners' only contact with the state of Indiana is its relationship with Quality Oil. This relationship began in the early 1990s when sales representatives from Quality Oil, who were located in Illinois, met with Kelley Partners to negotiate a contract between the parties.

Mr. Kelley made at least two visits to Indiana at that time to meet with a representative of Quality Oil. A contract was signed between the parties in 1994 and again in 1999.

In the spring of 2003, Mr. Kelley spoke with Heinold about entering into another contract. During this time, the men had several telephone conversations regarding this contract. Heinold made at least two visits to Kelley Partners' office, and Mr. Kelley made one visit to the offices of Quality Oil for an unspecified reason. The final contract was hand-delivered to Kelley Partners' office in Illinois by Heinold, where it was signed by the parties on June 26, 2003. Pursuant to this contract, Kelley Partners ordered products from Quality Oil, which was done either by telephone or fax through an 800 number at an unknown location.

We do not believe the contacts in this case are such as to permit Indiana courts to exercise jurisdiction over Kelley Partners. Kelley Partners is not generally engaged in business in Indiana. Its agents did not come to Indiana to offer or negotiate an agreement with Quality Oil. Its contact with the state was initiated by Quality Oil and consisted of interstate phone calls and faxes to place orders with Quality Oil and three visits to Indiana by Mr. Kelley over a ten-year period. Kelley Partners does not have the minimum contacts required to establish personal jurisdiction. Therefore, the trial court erred in its determination that Indiana had personal jurisdiction over Kelley Partners, and Kelley Partners' motion to dismiss should have been granted.

Reversed.

RILEY, J., and MAY, J., concur.